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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,224	01/29/2007	Alasdair Craig Stamps	1300-1-013PCT/US	7472
23565	7590	11/21/2008		
KLAUBER & JACKSON 411 HACKENSACK AVENUE HACKENSACK, NJ 07601			EXAMINER NATARAJAN, MEERA	
			ART UNIT 1643	PAPER NUMBER
			MAIL DATE 11/21/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/569,224

Applicant(s)

STAMPS, ALASDAIR CRAIG

Examiner

MEERA NATARAJAN

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-11 and 13-26 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 13-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendments in the reply filed on 08/01/2008 is acknowledged and entered into the record.
2. Accordingly, Claims 8-11 and 13-26 are pending.
3. Claims 10, 11, and 13-26 are withdrawn as being drawn to non-elected inventions.
4. Claims 8 and 9 will be examined on the merits.

Claim Rejections Maintained - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The rejection of Claims 8 and 9 under 35 U.S.C. 102(b) as being anticipated by Tang et al. (WO/2001/066689) is maintained for the reasons of record.
7. In response to Applicant's argument that the prior art lacks enablement, it is noted that "the standard for enablement of a prior art reference for purposes of anticipation under section 102 differs from the enablement standard under 35 USC § 112" and that "anticipation does not require actual performance of suggestions in a disclosure. Rather, anticipation only requires that those suggestions be enabled to one of skill in the art." (See, *Impax Laboratories Inc.*,

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81 U.S.P.Q.2d 1001, 1012, citing *Novo Nordisk Pharms., Inc v. Bio-Tech. Gen. Corp.*, 424 F.3d 1347, 1355 (Fed. Cir. 2005)).

8. Furthermore, Applicant has not provided any deficiency in the prior art teaching. As stated in the original office action mailed 03/06/2008 Tang et al. teach method for the treatment of cancer comprising administering to a subject a therapeutically effective amount of a composition comprising an antibody that binds to the KIAA0659 polypeptide. Tang et al. teach SEQ ID NO:340 which is identical to SEQ ID NO:1 of the instant application.

9. Attorney argument cannot take the place the evidence lacking in the record. *Meitzner v. Mindick*, 193 USPQ 17, 22 (CCPA 1977).

10. Applicant's arguments have been fully considered but are not found convincing essentially for the reasons of record set forth in the previous Office Action. Therefore the rejection is maintained for the reasons of record.

All other rejections of record are withdrawn in view of applicants amendments to the claims filed on 08/01/2008.

Conclusion

11. Claims 8 and 9 are rejected.

12. No Claim is allowed.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MEERA NATARAJAN whose telephone number is (571)270-3058. The examiner can normally be reached on Monday-Thursday, 9:30AM-7:00PM, ALT. Friday. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MN

/Larry R. Helms/
Supervisory Patent Examiner, Art Unit 1643